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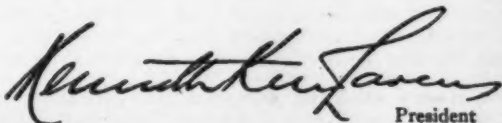
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations is to deal exclusively with members of the bar.

Encouragement for Business Expansion

Provisions of the Revenue Act of 1921 removing income taxes on paper profits incident to organization and reorganizations of corporations and effecting reduction in the stamp tax on non-par value shares, when the actual value thereof is less than \$100, are briefly reviewed in this number of The Corporation Journal.

Complete copies of the new Revenue Act may be had on request at any of our offices.



President

THE CORPORATION TRUST COMPANY

37 Wall Street, New York

Affiliated With

The Corporation Trust Company System

15 Exchange Place, Jersey City

Organized 1892

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DEPARTMENTS

- Corporation Department**—Assists attorneys in the incorporation of companies and in the licensing of foreign corporations to do business in every state and Canadian province, and subsequently furnishes annual statutory representation service, including office or agent required by statute.
- Report and Tax Department**—Notifies attorneys when to hold meetings, file corporation reports, and pay state taxes in every state and Canadian province.
- Legislative Department**—Reports on pending legislation; furnishes copies of bills and of new laws enacted by Congress.
- Trust Department**—Acts as trustee under deed of trust, custodian of securities, escrow depositary and depositary for reorganization committees.
- Transfer Department**—Acts as registrar and transfer agent of stocks, bonds and notes.
- Federal Department**—Reports decisions of the United States Supreme Court and rulings of the various Government departments. Furnishes agent at Washington for common carriers to accept service of orders, process, etc., of Interstate Commerce Commission.

SERVICES

- Federal Income Tax Service**—Reports the Federal Income Tax Law and the official regulations, etc., bearing thereon.
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- New York Income Tax Service**—Reports the New York Personal and Corporation Income Tax Laws and the official regulations, etc., bearing thereon.
- Federal Reserve Act Service**—Reports the Federal Reserve Act and the official regulations, etc., bearing thereon.
- Federal Trade Commission Service**—Reports the Federal Trade Commission Act and the Federal Anti-Trust Act (the Clayton Act) and the official orders, rulings, complaints, etc., bearing thereon.
- Stock Transfer Guide and Service**—Embodies extracts from the statutes and decisions of the various states and jurisdictions relating to transfers of corporate stock by executors, administrators, and guardians. Gives uniform requirements of the New York Stock Transfer Association, inheritance tax rates, and law provisions showing whether or not it is necessary to procure waivers or court orders. Reports new and amendatory legislation affecting stock transfers. (Will be ready shortly.)

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Outstanding Important Amendments to Revenue Act of Interest to those Organizing and Reorganizing Corporations

Without going into detail of the many phases of the 1921 Revenue Act, there seem to be three matters of outstanding importance to the organizers and reorganizers of corporations. These are as follows:

(1) Section 202 of the Income Tax Law before the amendment of 1921 provided upon reorganization or consolidation, where the aggregate par or face value of new stock received was in excess of that turned in, the person turning in the same was subject to tax on the amount of shares received in excess of the par or face value turned in. This feature of the act was a great discouragement in the organization of new corporations taking over interests in old ones, and to reorganizations generally. This section is now amended so that it provides that "when in the reorganization of one or more corporations a person receives in place of any stock or securities owned by him, stock or securities in a corporation a party to or resulting from such reorganization" no gain or loss

The last preceeding number of The Corporation Journal, was printed in June. This number contains all matter collected since the date of that issue.

shall be recognized "even if the property received in exchange has a readily realizable market value." The act defines reorganization so as to include an instance

where there is an acquisition by one corporation of at least a majority (1) of the voting stock and (2) of the total number of shares of all other classes, or of substantially all the properties of another. The term also includes recapitalization.

(2) The matter of receiving stock upon the original organization of a corporation in exchange for property is changed, so that even where the stock received has a market value, no tax is imposed where those transferring their property secure control of the company in exchange for their property. ("In control" is construed to mean "when owning at least 80% of the voting stock and at least 80% of the total number of shares of all the classes of stock of the corporation.")

(3) Another outstanding important amendment is the one reducing

the stamp tax on the issue of shares of non-par value when the actual value is less than \$100 per share. The act as amended imposes a tax of 5c per share "unless the actual value is in excess of \$100 per share, in which case the tax

shall be 5c on each \$100 of actual value or fraction thereof, *or unless the actual value is less than \$100 per share, in which case the tax shall be 1c on each \$20 of actual value, or fraction thereof.*" (Schedule A, Stamp Tax, Page 111, our pamphlet.)

Talks on Foreign Corporations

No. 13: Forfeiture of the right to sue as a penalty for failure to qualify under foreign corporation laws.

Referring to the requirements imposed upon foreign corporations by the various states, the United States Commissioner of Corporations in 1915, said: "The penalties imposed for technical failure to comply with such prerequisites and other legal conditions are, in many instances, drastic and severe. The actual money lost by corporations due to alleged unwitting violations of the laws of different states is undoubtedly very large." Unlike many statutory provisions, these penalties are enforced, and the business world is constantly being shocked by examples of large losses sustained by foreign corporations which have failed to obtain the requisite license, permit or authority, in some one or more of the states. The severity of these penalties does not prevent the courts from applying them to the letter. Thus, in a case denying enforcement of a mechanic's lien for \$32,224 because of non-qualifica-

tion of a foreign corporation in Michigan, the United States Circuit Court of Appeals for the Sixth Circuit, said: "It is, of course, unfortunate that the appellant must lose the cost of the material and labor that is added to the fund for distribution among the general creditors of the bankrupt; but that is not the fault of the referee in bankruptcy, or of the court. The appellant could easily have protected itself from loss by complying with the laws of Michigan relating to non-resident corporations doing business within that state. It failed, neglected, or refused to do this and the courts cannot relieve it from the consequences of its own neglect." (Phillips Co. v. Everett, 262 Fed. 341.) A recent decision by the Appellate Division, First Department, of New York, explains the reason courts are so willing to enforce penalties against foreign corporations. The court says: "The penalty for failure to comply with

the statute is the prohibition to maintain any action in this State upon any contract made by it within the State. It is part of the public policy of the State with reference to foreign corporations. When a foreign corporation comes into this State and transacts its business here, it owes obedience to the laws in force here. *It is primarily to compel obedience to our laws by such a corporation that the prohibition is imposed, and not that the defendant may repudiate a contract obligation.*" (Bradford v. Dunn, 188 N. Y. App. Div. 454). Although the public policy involved is to force corporations to comply with the law, the means employed are often of great benefit to those who deal with the corporation and who find when they are sued that they have a perfectly valid defense to any claim the corporation may make. The possibility of this defense has become very well known and every suit by a foreign corporation is now carefully scrutinized for the easily proven and often insurmountable plea of non-conformance with foreign corporation laws. With this policy of self interest by possible or actual litigants, a foreign corporation's chances of escaping all forms of penalties is reduced to a minimum.

The first penalty which confronts a non-complying foreign corporation is the (1) forfeiture of cor-

porate rights, then comes the possible (2) invalidity of its titles to properties in the state, (3) the invalidity or non-enforceability of its contracts in the state, (4) its right to sue and defend in the state courts, (5) the imposition of fines, usually in the sum of \$1,000, and in one state as high as \$10,000, (6) denial of the benefit of the statute of limitations, (7) civil personal liability of officers and agents, and (8) criminal liability of officers and agents, punishment in one state being a fine of \$2,000 and imprisonment not exceeding six months. Usually the statutes provide a combination of these penalties. The particular purpose of this talk is to single out and, at this time, briefly discuss forfeiture of the right to sue, leaving other penalties as subjects for future discussion.

Arkansas provides that a non-complying foreign corporation "cannot make any contract in this State which can be enforced by it either in law or in equity, and the complying with the provisions of this Act after the date of any such contract or after suit is instituted shall in no way validate said contract." (1916 Digest, Sections 927 and 928, as amended by Act 687, Laws of 1919.) No corporation which shall fail to comply can maintain any suit or action in any of the state courts of California, until it has complied with the law (Section 410, Dee-

ring's Civil Code, 1915). No foreign corporation is permitted to prosecute or defend any suit until the initial fee is paid in Colorado (Sec. 4, Chap. 102, Laws of 1911.) A non-complying foreign corporation cannot maintain any suit or action, legal or equitable, in any of the courts of the state, whether arising out of contract or tort, in Illinois (Sec. 67g, Rev. Statutes 1917, p. 657), in Indiana (Sec. 4094, Burn's Annotated Statutes, 1908), Minnesota (Sec. 6208, General Statutes, 1913), Missouri (Section 3040, Revised Statutes, 1909), Oklahoma (Section 1341, Revised Laws, 1910) and Texas (Article 1318, Complete Texas Statutes, 1920). Idaho provides that "no contract or agreement made in the name of, or for the use or benefit of, such corporation prior to the making of such filings as first herein provided, can be sued upon or enforced in any court of this State by such corporation" (Section 4775, Idaho Compiled Statutes, 1919). Rhode Island has a similar statute (Section 68, General Corporation Law, effective July 1, 1920), Maryland (Sec. 94, Annotated Code, 1911), Massachusetts (Sec. 5, Ch. 181, Gen. Laws, 1920), Nevada (Section 1350, Revised Laws, 1912), New Hampshire (Sec. 3, Chap. 187, Laws of 1913), Ohio (Sec. 178, Code, 1910), Oregon (Section 6911, Lord's Oregon Laws, 1910), Pennsylvania (Sec-

tion 4, Act of June 8, 1911, as amended by Laws of 1915, Act No. 93), provide in slightly varying terms that no action shall be maintained so long as the foreign corporation is in default in filing the requisite papers authorizing it to do business in the state. The effect in such states is often merely to stay proceedings until the temporary disability is removed by compliance (See *Natural Fertilizer Co. v. Fall River Five Cents Savings Bank*, 196 Mass. 458; *F. & G. Theatre Co. v. Greene*, 216 Mass. 171; *Kendrick & Roberts, Inc., v. Warren Bros. Co.*, 110 Md. 47.) On the other hand, statutes of some states are so worded as to make after-compliance non-effective. Thus no foreign corporation shall maintain any action upon any contract made by it in the state unless "prior" thereto it has procured a certificate of authority in New York (Section 15, General Corporation Law), and the constructions by courts of other states have led to the same result, for example in Colorado (*Western Electrical Co. v. Pickett*, 51 Colo. 415, 118 Pac. 988), in Illinois (*United Lead Co. v. J. W. Reedy Elevator Mfg. Co.*, 222 Ill. 199, 78 N. E. 567), in Kentucky (*Hayes v. West Virginia Oils, etc., Co.*, 183 Ky. 622, 210 S. W. 174), in Minnesota (*Heileman Brewing Co. v. Peimeisl*, 85 Minn. 121), in South Dakota (*American Copying Co. v. Eureka Bazaar*, 20

S. Dak. 526), in Oklahoma (Goodner Krumm Co. v. J. L. Owens Mfg. Co., 51 Okla. 376, 152 Pac. 86), and in Missouri (Parke, Davis & Co. v. Mullett, 245 Mo. 168).

A notable decision of the United States Supreme Court (Sioux Remedy Co. v. Cope, 235 U. S. 197), holds that the penalty of inability to sue cannot be applied to a claim arising out of interstate commerce. Whether the corporation is deprived of the right to sue in the federal courts on matters of intrastate commerce depends upon the wording of the particular statute and its construction by the courts of the state. If the statute provides that the contracts of a non-complying foreign corporation are void, the corporation is powerless to sue on them in the United States courts, as well as in

the State courts (Chattanooga National Building & Loan Ass'n. v. Denson, 189 U. S. 408, 47 L. Ed. 870; Diamond Glue Co. v. United States Glue Co., 187 U. S. 611, 47 L. Ed. 328; Vitagraph Co. v. Twentieth Century Optiscope Co., 157 Fed. 871; La Moine Lumber & Trading Co. v. Kesterson, 171 Fed. 980). A statute which merely prohibits suits in the state courts and does not make contracts void, does not prevent suits in the Federal courts (David Lupton's Sons Co. v. Automobile Club of America, 225 U. S. 489, 56 L. Ed. 1177; Thomas v. Birmingham Railway, Light & Power Co., 195 Fed. 340).

In our next talk we will discuss other phases of the effect of failure to comply with foreign corporation laws.

Domestic Corporations

Delaware

Rights of Preferred Stockholders May Be Altered by Amendment. The Court of Chancery of Delaware holds that the provisions of Section 26 of the General Corporation Law are a part of the contract between the stockholders and between the stockholders and the state, so that amendments to the charter made in the manner provided by Section 26 have the implied consent of the stockholders. The provision in the section particularly referring to preferred stock, shows that the power of amendment may be exercised even when it deprives a preferred stockholder of his rights. *Peters v. United States Mortgage Co.*, 114 Atl. 598.

What is Surplus Available for Dividends? A Delaware corporation had issued and outstanding about \$3,000,000 par value of its stock, preferred and common. The actual value realized from the sale of this stock was about \$1,700,000. Injunction was sought against payment of a dividend based upon the latter sum as the

capital liability. Refusing to grant such an injunction, the Chancellor says: "Section 35 is not the section that is meant to specify the law's plan of arriving at surplus or profits available for dividends. * * * In my view of the matter, Section 34 disposes of the question in controversy. * * * In ascertaining whether there is a fund available for dividends, capital must be put down at its paid in and not at its par value." *Peters v. United States Mortgage Co.*, 114 Atl. 598.

New York

Title to Assets Upon Dissolution. Completion of voluntary dissolution of a corporation pursuant to section 221 of the General Corporation Laws vests the title to the property of the corporation in its directors as trustees under section 35 of the General Corporation Law, for the benefit of its creditors, stockholders or members, unless other persons shall be appointed by the Legislature or some court. Therefore, money deposited in a bank by the trustees of the dissolved corporation, in the name of the corporation, does not vest title in the corporation so that it can be discovered by a judgment creditor in supplementary proceedings and reached by the sheriff under section 792 of the Civil Practice Act, but the title remains in the trustees who have the right to withhold payment of the sum until all claims against the corporation are ascertained, when they will be paid pro rata, the assets being insufficient to pay all the creditors in full. *Central Union Trust Co. of New York v. American Railway and Traffic Company* (reported in the New York Law Journal, October 29, 1921).

Pennsylvania

Necessity of Single Purpose and Proper Form of Statement Thereof. A proposed charter of a corporation containing the following statement of purpose: "Mining, quarrying, excavating, and boring for coal, limestone, sandstone, shale, fire clay and other minerals and substances incidentally developed; the manufacture of the same into coke, lime, cement, building-stone, bridge-stone, foundation-stone, brick, etc." was not approved as it embraced a plurality of "purposes."

Deputy Attorney General Hull, in his opinion rejecting the proposed charter, said: "To determine the question submitted, we must consider (1) the office or function of the statement of 'purpose' in a certificate of incorporation, and the essentials of singleness and certainty which are required in it; (2) the criterion according to which singleness of purpose is to be determined; and (3) the application of that criterion to the particular statement of purpose under consideration. The law contemplates the organization of corporations devoted to a single purpose, and the incorporation of companies for dual or incongruous purposes should not be allowed

unless there is a clear warrant in express language found in the acts of assembly conferring the power and granting corporate franchises. Any general expression which may embrace many different purposes, or kinds of business, is still more obnoxious to this principle. I am of the opinion that the character of the business of industrial corporations (those engaged in producing raw materials and in manufacturing) is to be determined by inquiring what commodities or articles of trade it produces, and that this is the criterion by which to judge whether the business described in the statement of its corporate purpose is a single business or not. Unless two raw materials are uniformly and universally found joined in nature, or two manufactured products have by the custom of trade and commerce been uniformly and generally produced by the same business entity, their production does not constitute a single business. Applying this test to the statement of purpose submitted, I cannot avoid the conclusion that it is uncertain and embraces more than a single kind of business. If the certificate applied for be granted, the corporation might conduct a coal-mining business, a limestone quarry business, a fire-brick business, a pressed-brick business and a cement business, most of which would not be in any matter connected with the others. I do not believe that this can be permitted. The applicant should choose which of the several kinds of business shall be *the business* of the proposed corporation, and so frame its statement of purpose that that business shall constitute *the business* of the corporation and that the other operations appear and be authorized only as incident to the conduct of *the business*. If it choose the mining of coal, the statement of purpose should read substantially as follows: 'The mining of coal and as incident thereto, the manufacture of coke and the mining, quarrying, excavating and boring for limestone, sandstone, shale, fire-clay, and other minerals and substances incidentally developed, and the manufacture thereof into lime, cement, building-stone and brick.' The distinction between *the business* in which the corporation proposes to engage and the incidental operations which it may have the power to engage in should be clearly drawn in the statement of purpose." Opinion to Hon. Cyrus E. Woods, Secretary of the Commonwealth, from the Attorney-General's Department. (The Legal Intelligencer, Oct. 7, 1921).

Washington

New Company Not Entitled to Name Similar to That of Dormant Corporation. The Secretary of State properly refused the filing of articles of incorporation of a domestic corporation to be named New Arlington Hotel Company where there was an existing corporation named the Hotel Arlington Company, although the latter corporation, having failed for two consecutive years to pay the

(Continued on page 36)

Profit by Your Banker's Example

Bankers are going to Washington constantly to get first hand information on measures affecting business. The Washington correspondent of *Successful Banking* says that "bank executives as a class seem to have awakened to the importance of registering their wishes at the seat of government with respect to the nation's legislative policies, *great and small*, and of going on record before rather than after the legislation in which they are interested has become a fact." Heretofore "there was not that *persistent day-in-day-out watchfulness* upon the minor as well as the major issues of national legislation which is warranted on behalf of the key of key industries."

The same writer recognizes the extent to which the real work of Congress is done in committee and points to the necessity of following the work of the various committees. On this subject he says: "In many instances banking sentiment was aroused with respect to a legislative proposal only after the project had taken definite form and was well on its way to a place on the statute books. Then it became a case of changing the direction of law-making enterprise that had attained full momentum—always a difficult task."

Mr. Executive, your banker's interests are identical with your own. Legislation having an adverse effect on your business is detrimental to his interests. If he finds it sufficiently important to follow legislation affecting both, isn't it imperative that you should do the same?

By means of our Congressional Service, a business house concerned with the iron and steel industry (for example) can keep informed right down to the minute of every legislative proposal affect-

ing that industry. Proposed tariff changes which if enacted might lower the price of steel; health or accident prevention bills which might affect the production of mines; labor laws which might increase or decrease the out-put of mills; railroad legislation which might bring about higher freight rates—all would be reported to the subscriber as soon as broached in Congress, and progress traced day-by-day until final action is taken.

In addition to the formal reports, each subscriber receives a daily letter summarizing the day's work of Congress and containing illuminating side lights on the support, opposition and probable chances for passage of each proposed measure.

With this Service, your selling plans, your buying schedule, your dividend policy, your accounting basis, your borrowings at the bank can be arranged to take full advantage of what is coming.

The cost of the Service is moderate. It may save you a trip to Washington. Subscribers may always write, wire or telephone our Washington office for further information about any bill—such as the real influences for or against it, its chances for passage, the probable amount of time required for enactment, etc. Members of our Washington staff will promptly attend to such inquiries—answering by wire if necessary.

Send us a list of the subjects in which you are interested and we will quote the cost of the Service.

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annual license tax, had been stricken from the records of the Secretary of State's office under Rem. Code 1915, Section 3715. The old company was not defunct on account of its delinquency but was, it might be said, merely dormant, and had the right to reinstate itself within the original life of the corporation by complying with the statutes, under the provisions of Section 3715 e, Rem. Code. State ex rel New Arlington Hotel Co. et al. v. Hinkle, Secretary of State, 197 Pac. 4.

Foreign Corporations

Alabama

Sale of Stock Within State by Agent of Foreign Corporation Constitutes Doing Business. Suit was brought by plaintiff against defendant upon a promissory note transferred to plaintiff by a foreign corporation which had failed to pay its franchise tax and secure a license to do business in Alabama. The note was given by defendant to the foreign corporation in payment for shares of stock in that corporation which had been sold to defendant in Alabama. The court held that the plaintiff could not recover. The provisions of the code of Alabama, sections 3651-3653, denouncing as void all contracts made in Alabama by foreign corporations without having first procured a permit to do business by the payment of a franchise tax apply.

The agent of the foreign corporation employed for the purpose of selling stock in Alabama negotiated the sale to the defendant in that state, accepting his note therefor. True, the sale was subject to approval by the corporation at its home office in Delaware, but the contract was negotiated and the note in suit executed and delivered in Alabama. The court said: "We cannot doubt that the negotiation of the contract and the acceptance of the note in this state, though conditional, constituted the business of selling stock in this state within the meaning of the statute, supra, (Code, sections 3651-3653)." Langston v. Phillips, 89 Southern 523.

New Hampshire

Foreign Corporation's Failure to Comply with Statutes Before Suit Upon First Installment of Contract Does Not Prevent Suit Upon Second Installment After Compliance. Plaintiff, a foreign corporation, contracted with defendant, to cut certain timber. The first installment of the contract price was not paid. Before suit was brought by the foreign corporation for breach of the contract by defendants' failure to pay the second installment it had qualified to do business under Laws of New Hampshire, Laws 1913, C. 187. It was held that the foreign corporation was not prevented from suing for the second installment, as the failure to pay the

first installment due under the contract was not a breach of the entire contract, and it had complied with the statute before the suit for the second installment. *George W. Blanchard and Sons Co. v. American Realty Co.*, 115 Atl. 4.

New Jersey

Single Sale Within State is "Not Doing Business" Therein. In an action by a foreign corporation to recover damages for breach of contract for defendant's refusal to accept merchandise sold within the state, it was held that a single sale within the state, did not constitute "doing business" within the meaning of the statutes prescribing the conditions on which such corporations can do business, and plaintiff was allowed to recover. *Wood and Selick, Inc., v. American Grocery Co.*, 114, Atl. 756.

New York

Factors Considered in Holding that Corporation is Not Doing Business in the State. In an action upon a contract by a foreign corporation for goods sold and delivered, the defense was interposed that the foreign corporation was "doing business" in the state, and had not qualified under Section 15 of the General Corporation Law (as amended by Laws of 1917, Chap. 594), so as to give it the right to bring action upon a contract made in the state. The facts were as follows: Orders were taken by a firm of commission merchants in the state which represented a number of foreign corporations having factories, including the plaintiff. The lease of the premises occupied by the commission merchants was in their own name, as was also the telephone contract. Plaintiff had nothing whatever to do with the running of the New York office or its expenses, and contributed nothing towards its maintenance. The commission merchants employed their own help and paid all expenses. The only goods of the plaintiff in possession of the commission merchants were samples which had only a nominal value. The goods sold never passed through the hands of the commission merchants. The orders that were accepted by them were subject to approval of the plaintiff, Eagle Manufacturing Company. The plaintiff never had any stock of merchandise in the State of New York, nor did it have any bank account, officer, or keep any books in the state. Upon the foregoing facts, Judge Greenbaum, expressed the opinion, that: "We think the foregoing state of facts, which are uncontradicted, establishes as matter of law that the plaintiff was not doing business in this state as contemplated by the statute." *Eagle Manufacturing Company v. Arkell and Douglas, Inc.*, 197 App. Div. 788.

Exhibition at a Fair is Doing Business. A foreign corporation represented by its secretary and treasurer was in attendance at a toy manufacturers fair held in New York. It occupied a room for

its exclusive use in the hotel where the fair was conducted. Upon the outer door of the room the defendant maintained a sign reading, "Wilder Manufacturing Company." Besides defendant's secretary and treasurer an employee of the company was in charge of the room and the merchandise exhibited for sale. The company took such orders as could be secured from persons attending the fair, although none of the merchandise on exhibition was for sale. The orders were subject to the approval of the home office of the company in St. Louis, Missouri. It was held that this constituted doing business within the state sufficient to make valid the service of a summons and complaint upon the secretary and treasurer of the corporation in an action against the corporation. *Bogert and Hopper, Inc., v. Wilder Manufacturing Co.*, 197 App. Div. 773.

Pennsylvania

"Doing Business." The director of a foreign shoe manufacturing corporation came within the state primarily to act as witness in a suit brought by the foreign corporation, but also with instructions to settle a controversy with plaintiff corporation with reference to a contract to purchase leather. An agreement was reached; but the director on behalf of defendant corporation declined to accept further shipments of leather. While within the state the director transacted other business with various leather companies, by inspecting their stocks, making substitutions of one grade of leather for another, etc. In an action by plaintiff against defendant for breach of contract, it was held that the service of a writ upon the director of defendant company within the state gave jurisdiction over the defendant company, as the actions of its agent and director within the state constituted "doing business." *Dungan, Hood and Co., Inc., v. C. F. Bally, Limited*, 271 Fed. 517.

Taxation

Michigan

New Corporation Tax Law is Constitutional. Act 85, Laws of Michigan, 1921, imposing an annual franchise of $3\frac{1}{2}$ mills on each \$1 of the paid-up capital and surplus—the minimum fee being \$50, the maximum \$10,000—has just been sustained as constitutional by the state Supreme Court. The opinion reviews the different kinds of corporate franchise taxes and makes the distinction between the franchise "to be" a corporation (belonging to the incorporators) and the franchise "to do" business as a corporation (belonging to the corporation). Both these franchises are separately taxable. Differences in amount of taxes on the large and small corporations because of the maximum and minimum provisions are lawful. Their correction is a legislative and not a judicial function. Union

Steam Pump Sales Company v. Charles J. Deland, Secretary of State, Supreme Court of Michigan, December 5, 1921 (not yet officially reported).

New Jersey

Mailing Report Which Was Not Received Not Compliance with Statute Requiring Filing of Report by Corporation as Prerequisite to Exemption. The mailing of a report, which was not received, addressed, inclosed in a postpaid sealed envelope, "State Board of Taxes and Assessment, Trenton, N. J." April 15, 1919, duly deposited in the City of New York, is not a compliance with the statute requiring the filing of a return as a prerequisite to the allowance of exemptions to manufacturing or mining corporations from taxation. *Wilckes-Martin-Wilckes Co. v. State Board of Taxes and Assessment, et al.*, 115 Atl. 79.

Pennsylvania

Capital Stock Taxation. The charter of a company authorizing it to engage in manufacturing does not exempt the corporation from taxation unless its capital stock is actually and exclusively so engaged. *Commonwealth v. Harry T. Murphy Co., Inc.*, 10 Pennsylvania Corporation Reporter 113.

Some Important Matters for December, January and February

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service maintained by The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.

ALASKA—Annual Corporation Tax due on or before January 1. Domestic and Foreign Corporations.

Annual Applications for licenses on certain occupations due on or before January 15. Domestic and Foreign corporations and persons.

Annual Report due on or before March 1. Foreign corporations.

ALABAMA—Annual Franchise Tax payable January 1. Foreign and Domestic Corporations. The payment of this tax for 1922 may be extended to March 1st.

Annual Fee for Permit to do Business, due January 1. Foreign Corporations.

Annual Franchise Tax Statement due between November 1 and December 15. Domestic and Foreign Corporations. The filing of this return for the year 1922 may be extended for 30 or 60 days.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1—Domestic and Foreign Corporations engaged in mining of any kind.

CALIFORNIA—Annual License Tax due between January 1 and first Monday of February—Domestic and Foreign Corporations.

Capital Stock Affidavit due between January 1st and first Monday of February—Foreign corporations.

Certificate as to Directors due between January 1st and first Monday of February—Foreign Corporations.

Report on General Franchise due within 10 days after first Monday in March—Domestic and Foreign Corporations.

COLORADO—Annual Report due within 60 days after January 1—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax Return due on or before first Tuesday in January—Domestic corporations.

GEORGIA—Annual Franchise Tax due on or before January 1—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between February 1 and March 1—Domestic and Foreign Corporations.

Annual Report to Director of Labor due between January 1 and January 15—Domestic and Foreign Corporations.

INDIANA—Annual Report due during January—Foreign corporations.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31—Domestic and Foreign corporations.

KENTUCKY—Annual Report due on or before February 1st—Domestic and Foreign Corporations.

MAINE—Annual License Fee due on or before March 1—Foreign Corporations.

MARYLAND—Annual Report due between January 1 and March—Domestic and Foreign Corporations.

MASSACHUSETTS—Annual Report of information for income tax due between January 1 and March 1—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due between January 1 and March 1—Domestic and Foreign Corporations.

Annual Capital Stock Report due on or before March 1—Domestic and Foreign Corporations.

MONTANA—Annual Report due on or before March 1—Domestic Corporations.

Annual Return of Net Income due between January 1 and March 1—Domestic and Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before March 1—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax payable on or before January 15—Domestic and Foreign business corporations, other than those subject to so-called income tax.

Annual Report due during January—Domestic and Foreign Corporations.

Capital Stock Reports due between November 1 and December 15th—Domestic and Foreign business corporations, other than those subject to so-called income tax.

Annual Franchise Tax on Income of Business Corporations due on or before January 1—Domestic and Foreign business corporations other than realty and holding companies.

Annual Return of withholding agent due between January 1 and April 15—Domestic and Foreign Corporations.

NORTH CAROLINA—Annual list of officers and employees due during January—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Franchise Tax Report due on or before March 1—Domestic and Foreign Corporations.

Annual Income Tax Return between January 1 and March 1—Domestic and Foreign Corporations.

OHIO—Report to Department of Industrial Relations due during January—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Report and Corporate Loan Report due between January 1 and February 28—Domestic and Foreign Corporations.

Bonus Report due between January 1 and February 28—Foreign Corporations.

RHODE ISLAND—Corporation Tax Return due on or before March 1—Domestic and Foreign Corporations.

Annual Report due during February—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due during January—Foreign Corporations.

Annual License Tax due during Month of February—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due between January 1 and March 1—Foreign Corporations.

TEXAS—Annual Capital Stock Report due between first day of January and the 15th day of March—Domestic and Foreign Corporations that are required to pay annual franchise tax.

UNITED STATES—Fourth instalment of income and excess profits tax due December 15—Domestic and Foreign Corporations operating on calendar year basis.

UTAH—Corporations License Tax due between November 15 and December 15. Domestic and Foreign Corporations.

VERMONT—Annual Tax Return due on or before March 1—Domestic and Foreign Corporations.

Annual License Tax payable on or before March 1—Domestic and Foreign Corporations.

Extension of Certificate of Authority due between January 1 and March 31—Foreign Corporations.

Annual Report due on or before March 1—Domestic Corporations.

List of Stockholders due on or before April 5—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1—Domestic Corporations.

WEST VIRGINIA—Excise Tax Return due on or before March 1—Domestic and Foreign Corporations.

WISCONSIN—Income Tax Return due on or before February 15—Domestic and Foreign Corporations.

Income Tax due on or before January 13—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1—Domestic Corporations.

Annual Report due between January 1 and April 1—Foreign Corporations.

PUBLICATIONS

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

Shares Without Par Value. This pamphlet contains what we believe to be the only published synopses of the 23 non-par value laws in force at the present time.

New York Non Par Value Law, as Amended. Includes important changes by the 1921 Legislature.

What Constitutes "Doing Business." (Available only to members of the bar.) The more important court decisions on "doing business," handed down in the course of the past ten years, have been reported in The Corporation Journal. These have been arranged under state headings and are reprinted in pamphlet form.

Talks on Foreign Corporations. A series of articles has been appearing for some time under this heading in The Corporation Journal. For the convenience of those interested in the subject of foreign corporations, we have reprinted "Talks" Nos. 1-8 in pamphlet form. The articles will continue to appear in The Corporation Journal.

Revenue Act of 1921. Contains full text of the new Revenue Act, approved by the President November 23, 1921.

Business Corporations Under the Laws of Delaware. Gives advantages under the law, statutory requirements and forms; includes a description of shares without par value. The General Corporation Laws are published in a separate booklet.

Extracts from the Statutes of the Various States Relating to the Admission of Foreign Business Corporations (revised to January, 1921) may be had by COUNSEL who are interested in the qualification of a particular corporation in a state or group of states. Please indicate in which states you are interested. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the states under consideration.

Issuance, Transfer and Registration of Corporate Stock is the title of our pamphlet, printed to supply the demand for information on these subjects.

New York Transfer Requirements. This is a card listing requirements to be observed in transferring various classes of stock in New York.

Illinois Transfer Requirements. Gives requirements to be observed in Illinois.

THE CORPORATION JOURNAL

The Corporation Journal is sent without charge to those requesting that their names be placed on the mailing list. A substantial ring binder will be furnished on receipt of \$2.00.

Congress Reconvened December 5

SEVERAL important bills await action at this session. Hearings on the proposed amendments to the Transportation Act are progressing. Whether intrastate rates are to be subordinated to interstate rates in cases of conflict is receiving careful consideration. Funding of the foreign debt and the so-called railroad funding bill are marked for early disposal. Effects of the proposed American valuation plan are being studied by customs experts.

Under conditions existing in Congress today almost any kind of legislation may be expected, always bearing in mind that political expediency may indicate action on subjects when least anticipated. It is probable some legislation will be passed to appease one faction or another. Further discussion of the Soldiers' Bonus question may be expected. We may be certain the tax question has not been settled.

It is to the great advantage of corporations and their counsel to be in constant and speedy touch with Congress during this session.

By means of daily and direct reports from Washington, The Corporation Trust Company's Congressional Service will keep you informed right down to the minute of the important measures to be acted upon.

Send us a list of the subjects in which you are interested, and we shall gladly quote the cost of our service.

THE CORPORATION TRUST COMPANY

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